

1           BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

2                   NANCY KEENAN

3                   STATE OF MONTANA

4                   \* \* \* \* \*

5       ROWLAND THROSSSELL,                   )

6                   Appellant,                   )

7           vs.                   )

DECISION

                  OSPI 159-88

8       BOARD OF TRUSTEES OF                   )  
9       GALLATIN COUNTY SCHOOL                   )  
10      DISTRICT NO. 7, BOZEMAN,                   )  
         MONTANA,                   )

11                   Respondent.                   )

12                   \* \* \* \* \*

13                   Statement of the Case

14           Rowland Throssell was employed by Bozeman School District  
15   No. 7 (hereinafter "the District") from 1976 to 1984. He retired  
16   from the District on June 30, 1984 and claims he is entitled to  
17   benefits under the Bozeman Public Schools Voluntary Career Option  
18   Plan (hereinafter "the Plan"). The District denied his claim for  
19   benefits under the Plan and Throssell filed an appeal with the  
20   Gallatin County Superintendent of Schools. Throssell then made a  
21   motion to have the County Superintendent dismiss the appeal  
22   contending that she lacked jurisdiction. The County  
23   Superintendent granted his motion to dismiss and Throssell filed  
24   an action in District Court. The Court granted the District's  
25   motion for summary judgment for failure to exhaust his

1 administrative remedy. Throssell appealed to the Mt. Supreme  
2 Court. The Supreme Court vacated the District's order granting  
3 summary judgment. The Supreme Court held the County  
4 Superintendent had jurisdiction and remanded the matter to the  
5 County Superintendent for hearing.

6 The hearing was held October 12, 1988. The County  
7 Superintendent issued her decision on November 3, 1988. She  
8 concluded Throssell's contract with the District entitled him to  
9 benefits under the Plan if he met the requirements of the Plan.  
10 The County Superintendent found Throssell did not have the  
11 minimum 13 years of district-credited service necessary to  
12 receive benefits under the Plan.

13 Throssell appealed the decision of the County Superintendent  
14 to the State Superintendent of schools on November 18, 1988. The  
15 District filed a cross-appeal on November 28, 1988.

16 The issues on appeal are:

17 1. Whether the County Superintendent erred in finding  
18 Throssell did not have 13 years of district-credited  
19 service.

20 2. Whether the County Superintendent erred in  
21 concluding Throssell was entitled to the benefits of  
22 the Plan under the terms of his 1983-1984 contract.

23 The parties briefed the appeals and the State Superintendent  
24 heard oral argument on November 16, 1989.

25 Having reviewed the complete record, read the briefs of the

1 parties and heard oral argument, this state Superintendent now  
2 makes the following decision:

3 DECISION

4 The State Superintendent of Public Instruction has  
5 jurisdiction of this appeal in accordance with Section 20-3-107.

6 The Findings of Fact, Conclusions of Law and Order of the  
7 Gallatin County Superintendent of Schools is hereby affirmed.

8 MEMORANDUM OPINION

9 Standard of Review

10 The standard of review applied to findings of fact is  
11 whether they are "clearly erroneous". Factual findings will be  
12 upheld if supported by substantial credible evidence. A finding  
13 is clearly erroneous if a review of the record leaves the State  
14 Superintendent with the definite and firm conviction that a  
15 mistake has been made. Conclusions of law are subject to an  
16 "abuse of discretion" standard of review.

17 Discussion

18 The witnesses in this appeal talk about three different  
19 types of service: (1) out-of-district, (2) in-district, and (3)  
20 district-credited service. The Plan, item 3 (b) states: "The  
21 amounts of payment involved are strictly dependent upon the  
22 number of years of district-credited service." All parties agree  
23 that Throssell has eight years of in-district service and eleven  
24 years of out-of-district service. The controversy is over  
25 "district-credited" service.

1           Whether Throssell had 13 years of "district-credited  
2 service" is a factual question. The County Superintendent found  
3 Throssell had "11 years of out-of-district service when he came  
4 to the District." (See FF#4). She found the District employed  
5 Throssell for eight years. (See FF#10). She also found that  
6 "the minimum number of years of district-accredited (sic) service  
7 for a teacher to qualify under the Voluntary Career Option Plan  
8 was 13 years." (See FF# 12.) The County Superintendent  
9 concluded that: "Throssell has eight years of service with the  
10 District. From the evidence presented neither Throssell's 1976  
11 contract nor 1983 contract grants credit to Throssell for  
12 outside-district service.  
13 (ConLaw #9).

14           Throssell's record of service card shows the number "11" in  
15 the "out" column. Exhibit No. 6. Throssell contends that the  
16 District credited him with eleven years of out-of-district  
17 service on the permanent record card and therefore, he is  
18 entitled to benefits under the Plan. Exhibit 5. He contends he  
19 is entitled to credit for seven of the eleven years out-of-  
20 district service--the maximum number of years the District may  
21 credit a newly hired teacher.

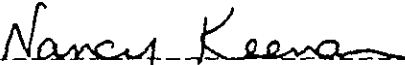
22           The maximum number of years out-of-district service a "new  
23 teacher" could be credited is seven years. A decision on the  
24 actual number of years of out of district service credited to a  
25 new teacher is made by the District at the time of hire. The

1 new teacher's placement on the salary matrix requires the  
2 District to decide how many years of out-of-district service it  
3 will credit to a new teacher. The term "district-credited"  
4 requires action on the part of the District. The District may  
5 credit a new teacher with zero through seven years of out-of-  
6 district service.

7 There is substantial, credible evidence on the record to  
8 support the County Superintendent's conclusion that Throssell  
9 does not have the requisite 13 years of district-credited service  
10 to qualify for benefits under the plan. This State  
11 Superintendent is not convinced that a mistake has been committed  
12 by the County Superintendent.

13 This State Superintendent is not persuaded that Mr.  
14 Throssell was not entitled to benefits under the Plan if he were  
15 qualified. The language of his 1983-1984 contract supports the  
16 County Superintendent's conclusion that Throssell is entitled to  
17 "[a]ll other benefits equal to those offered to other certified  
18 employees of the District. . ."

19 DATED this 14 day of February, 1990.

20  
21   
22 NANCY KEENAN  
23  
24  
25

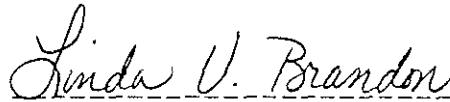
CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on the 14<sup>th</sup> day of February, 1990,  
a true and exact copy of the foregoing Decision was mailed,  
postage prepaid, to:

Gregory O. Morgan  
409 South 22nd Avenue  
P.O. Box 1530  
Bozeman, MT 59771-1530

Donald E. White  
Westbrooke Center, Suite 9  
1800 West Koch  
Bozeman, MT 59715

Mary Ann Brown  
Gallatin County Superintendent  
P.O. Box 956  
Bozeman, MT 59715

  
-----  
Linda V. Brandon  
Paralegal Assistant  
Office of Public Instruction